

# The Gazette of India

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**No. 83] NEW DELHI, WEDNESDAY, APRIL 15, 1953**

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### ELECTION COMMISSION, INDIA NOTIFICATION

*New Delhi, the 7th April 1953*

**VS.R.O. 533.**—**WHEREAS** the election of Syed Ahmad Syed Isak of Hoshangabad, as a member of the House of the People from the Hoshangabad constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Hari Vishnu Kamath of Dhantoli, Nagpur ;

**AND WHEREAS** the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said election petition ;

**NOW, THEREFORE,** in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the Order of the Tribunal.

### BEFORE THE ELECTION TRIBUNAL, HOSHANGABAD ELECTION PETITION NO. 180 OF 1952

**PRESENT :**

1. Shri B. K. Puranik, B.A., LL.B. (Distt. and Session Judge, Hyderabad) — *Chairman.*
2. Shri S. M. Ahmed, B.A., LL.B. (Retd. District and Session Judge) } *Members of the*
3. Shri B. Chatterji, M.A., LL.B. (Advocate). } *Tribunal.*

In the matter of an application under Section 81 of the Representation of the People Act, 1951.

Hari Vishnu Kamath s/o Rama Kamath, aged 44 years, resident of Dhantoli, Nagpur, Tahsil and District Nagpur—*Petitioner.*

*Versus*

1. Syed Ahmad Syed Isak, Advocate, of Hoshangabad, Tahsil and District Hoshangabad.
2. Sukumar Shyamrao Pagare, formerly of Itarsi, now resident of Friends Rural Centre, Rasulia, Tahsil and District Hoshangabad.
3. Raghunathprasad Kaluram Parsai of Sohagpur, Tahsil Sohagpur, District Hoshangabad.
4. Harnarainsingh Pyarelal Katakwar of mouza Sirpan, Post Khaparkheda, Tahsil Sohagpur, District Hoshangabad.
5. Raghuhirprasad Nandkishore Gour, Pleader, Hoshangabad, Tahsil and District Hoshangabad—*Respondents.*

**FOR PETITIONER.—**

1. Shri N. C. Chatterji, Advocate.
2. Shri R. L. Sharma, Advocate.
3. Shri Badkas, Advocate.

## FOR RESPONDENT NO. 1.—

1. Shri G. S. Pathak, Advocate.
2. Shri C. B. Parakh, Advocate.
3. Shri Hazarnawis, Advocate.
4. Shri Nanhelal, Pleader.
5. Shri R. K. Dixit, Pleader.

## JUDGMENT

DELIVERED ON THE 27TH DAY OF MARCH 1953.

1. The petitioner, Shri Hari Vishnu Kamath, was a candidate for election to a seat in the House of People from Hoshangabad Parliamentary Constituency in the State of Madhya Pradesh. This is a single-member Constituency. Respondents 1 to 5 were the other candidates at the said election. Respondents Nos. 4 and 5 had withdrawn their candidature. The polling for election to the above seat took place on the 31st December, 1951, and on the 7th, 17th and 24th January 1952. The counting commenced on the 25th January 1952 and ended on 3rd February 1952. Respondent No. 1, Shri Syed Ahmed, was declared elected by a majority of only 174 votes over the petitioner, the contesting candidates having been declared to have secured valid votes as shown below :—

- (i) Petitioner 65201.
- (ii) Respondent No. 1 65375.
- (iii) Respondent No. 2 20653.
- (iv) Respondent No. 3 13609.

2. The election of the respondent No. 1 has been challenged by the petitioner on one or more grounds stated in the petition. Those are as below :—

- (a) Counting was done contrary to the rules at five different places and on five different dates.
- (b) The Returning Officer erroneously totalled the valid votes of the petitioner in Piparia part of the Constituency as 5321 whereas the correct total should have been 5391—a difference of 70 votes.
- (c) That at the Polling Stations, Sobhapur Nos. 316 and 317 in Sobhapur part of the Constituency ballot-papers bearing marks different from those which were authorised for use at those Polling Stations were found. These ought to have been rejected by the Returning Officer under Rule 47 of the Representation of People Rules of 1951. Those were, however, improperly accepted by the Returning Officer. If these votes found in the boxes, both of the petitioner and the respondent No. 1, had been rejected as required by Rule 47 *ibid*, the respondent no. 1 would not have secured the marginal advantage of 239 votes, which he actually did in these two Polling Stations.
- (d) That the Returning Officer did not properly verify the account of votes, submitted by the Presiding Officers of the Polling Stations as required by Rule 49 *ibid*. The Petitioner quoted in this connection 16 instances in which the ballot-papers found in the ballot-boxes of the candidates at some of the Polling Stations were found to have exceeded the number of ballot-papers which should have been found in the boxes at those stations according to the account in Form 10. There were thus serious mistakes in counting of the votes throughout the Hoshangabad Constituency and therefore a total recount of valid votes was necessary.

3. For the above reasons the petitioner contended that the election of the respondent no. 1 was void and illegal. He contended that the election and the result thereof were materially affected by the improper acceptance of the votes at Sobhapur Polling Stations by the Returning Officer and also by the Returning Officer's not verifying the accounts of the ballot-papers submitted to him properly as required by the rules. He claims that he has, in fact, secured majority of valid votes and therefore he is entitled to a declaration that he has been duly elected to a seat in the House of People from Hoshangabad Parliamentary Constituency. He thus claimed a declaration that the election of the respondent no. 1 should be declared as void and he himself be declared to have been duly elected.

4. The respondent no. 1, Shri Syed Ahmed, contended that the election of the petitioner would have been void for reasons given by him in his recrimination, if he had been a returned candidate and a petition had been presented calling in question his election. According to him, the petitioner filed three nomination papers but none of them was filed in accordance with the provisions contained in Section 33 of the Representation of People Act, 1951, and hence the petitioner was not a duly nominated candidate and his nomination papers were improperly accepted and the same had resulted in materially reducing the number of voter which the respondent no. 1 would have obtained.

5. The respondent no. 1 denied that counting of votes at five places was contrary to the rules or that there was no proper verification of the account of the ballot papers by the Returning

Officer. He admitted that under Rule 28 of the Representation of People Rules, 1951, the Election Commission of India decided on 20-9-52 that the ballot papers to be used for purposes of voting at elections to the House of People from all the Parliamentary Constituencies in Madhya Pradesh should bear as its distinction mark a green bar printed near the left margin thereof. He further submitted that the above decision of the Election Commission was not final and it was and could be modified and varied by the Election Commission from time to time. He denied that ballot papers with different distinguishing marks were found in the boxes at Sobhapur Polling Stations Nos. 316 and 317. He submitted in the alternative that those votes were perfectly valid votes and they were rightly accepted by the Returning Officer. He pleaded that the provisions of Rule 47 were not mandatory and the Returning Officer had rightly accepted as valid, votes polled at the Sobhapur Polling Stations. In this connection the respondent no. 1 stated that at Malkajira and at Bamangaon Polling Stations the respondent got 117 more valid votes which were wrongly rejected by the Returning Officer. He was entitled to have those 117 more valid votes counted in his favour.

6. As to the discrepancies in the account of the ballot papers in the 16 instances mentioned by the petitioner, the respondent no. 1, replied that verification of the account of the votes may be ordered only in those 16 cases if the Tribunal found the discrepancies to be due to the misconduct of the Returning Officer or as materially affecting the result of the election. In the end he stated that his own election was perfectly valid as he secured a majority of votes and the petitioner could not succeed and could not get the reliefs claimed by him.

Respondent no. 3, Shri Raghunathprasad Parsai, filed his written statement but it is not of much consequence and hence it is not necessary to state his case.

8. On these and other pleadings of the parties the Tribunal framed the following issues for trial. The findings arrived at by the Tribunal are stated against the issues :—

<i>Issues</i>	<i>Findings</i>
1. Was the petitioner a duly nominated candidate for election to a seat in the House of People from Hoshangabad Parliamentary Constituency ?	Yes.
2.(a) Whether the counting of votes on five different dates and at five different places was contrary to the Representation of the People Rules of 1951 ?	No.
(b) If so, what is the effect of the above on the petition and reliefs claimed therein ? Or,	Nil.
(c) Whether the counting at five places and in five dates was done according to the directions issued by the Election Commission of India in pursuance of the powers vested in them by the proviso to Sub-rule (1) of Rule 44 ?	Yes.
3. Whether the petitioner has in fact polled 5391 valid votes at Piparia while the Returning Officer wrongly totalled them as 5321 ?	Yes.
4. (a) Whether several ballot- papers found in the boxes of both the petitioner and the respondent no. 1 at Sobhapur Polling Stations Nos. 316 and 317 bore different marks from the authorised marks and hence those were invalid votes under Rule 47 and ought to have been rejected by the Returning Officer ?	Yes.
(b) Whether 301 such invalid votes of the Polling Stations Nos. 316 and 317 were added to the account of the respondent no. 1 and 62 to the account of the petitioner, the respondent no. 1 thus getting a marginal advantage of 239 votes over the petitioner ?	Yes.
5. (a) Or whether the decision of the Election Commission as to the distinguishing mark was not final and it was modified from time to time and the Returning Officer was permitted to accept and count all votes irrespective of the distinguishing mark ?	First decision was final and could not be modified after polling.
(b) If so, whether the decision could be modified by the Election Commission after the polling was done ?	No.
(c) Whether the above votes were valid otherwise also for reasons given by the respondent no. 1 in para 9 of his reply ?	No.
6.(a) Whether the Returning Officer did not, contrary to Rule 49, verify the accounts submitted by the Presiding Officers ?	He did not verify properly.

Issues	Findings
(b) Whether the petitioner and his agents could not check the counting of votes as a large number of boxes were opened and account made simultaneously ?	They could.
(c) Whether the election has been materially affected by the discrepancies in the number of votes recorded in the forms and those actually found in the boxes as alleged ?	No, though there are some discrepancies.
(d) Whether a fresh recount of valid votes should, therefore, be ordered ?	Not a total recount Recount is made by us in the specified cases.
(e) If recounting is ordered, of which polling stations it should be ordered ?	As above.
7. Whether the election of Shri H. V. Kamath would have been void for reasons stated by the respondent no. 1 if he had been a returned candidate and if an election petition had been made against him, as alleged ?	No.
8.(a) Whether all the three nomination papers filed by Shri H. V. Kamath were not filed in accordance with the provisions of Section 33 ?	They were proper and valid.
(b) Whether they all infringed other Sections and Rules made thereunder as shown in the Recrimination ?	No.
(c) Whether all the nomination papers of the petitioner were otherwise defective and invalid for reasons stated in the Recrimination ?	No.
(d) Whether all the nomination papers were, therefore, wrongly and improperly accepted by the Returning Officer ?	No.
(e) Whether the improper acceptance of the nomination papers of Shri H. V. Kamath has materially reduced the number of the votes which the respondent no. 1 would have obtained ?	It was not an improper acceptance.
9. (a) Whether the Returning Officer illegally rejected many valid votes polled by the respondent no. 1 at polling stations Nos. 299 and 371 as stated by him in paras. 13 and 14 of the Recrimination and para. 10 to 12 of the written statement of the respondent no. 1 ?	No.
(b) Whether the Presiding Officers of Malkajra and Baman-gaon acted wrongly in issuing the wrong ballot-papers to the voters and not reporting the fact to the Election Commission and is not getting them validated as stated by respondent no. 1 in para. 15 (6) of the Recrimination ?	Yes. But there is no provision for getting the ballot papers validated by the Election Commission.
(c) Whether these votes should be accepted in favour of the respondent no. 1 as genuine votes ?	No.
(d) Whether if these votes are accepted in favour of the respondent no. 1, he would be found to have secured at these polling stations 117 more valid votes than the petitioner ?	Yes, that would have been the result..
10. Whether the question of the intention of the voters is relevant and can be done into ?	Yes, but only as far as it can be gathered from the manner of voting.
11. To what relief is the petitioner entitled ? What order or orders should be passed by the Tribunal.	The petition deserve to be dismissed.

#### Reasons for the Findings

9. *Issues Nos. 1, 7, 8 (a) (b) (c) (d) and (e).*—These are allied issues and are therefore taken up together for consideration. The respondent no. 1's contention is that the nomination papers filed by the petitioner were improperly accepted by the Returning Officer. Those should have been rejected for various reasons stated by the respondent no. 1. He pleaded that the election of the petitioner would be void for the above reasons if he had been declared elected, and a petition was made calling in question his election. The reasons why the nomination papers of the petitioner ought to have been rejected are the following according to the respondent no. 1 :—

- (1) That the first nomination paper dated 13-11-51 was not presented at the office but at the private residence of the Returning Officer.

- (2) That the nomination papers did not show that the petitioner was a candidate for a seat to the House of People.
- (3) That the certified copy of the entry in the Electoral Roll filed by him did not show that he was an elector in the Parliamentary Constituency.
- (4) That the certified copy of the entry in the Electoral Roll was not issued by the authority which had the custody of the Electoral Rolls.
- (5) That his proposer and seconder were not electors in the Parliamentary Constituency.
- (6) That Shri Gour, his proposer, being himself a candidate for the same election could not be the proposer.

10. As to the first ground mentioned above, it is sufficient to refer to the petitioner's evidence on the point and also to the Returning Officer's own certificates on the first nomination paper dated 13-11-51 and on the other nomination papers that the papers were presented at the office and not at the residence of the Returning Officer. There is no force in this contention.

11. As to the second ground, Shri R. S. Dave, Election Officer, as A. W. 3, has himself stated in his evidence that on perusing the nomination papers of the petitioner he could immediately know that he was a candidate for a seat in the House of People. The portion "Legislative Assembly" from the title of the forms was already scored out and the forms showed clearly that the petitioner was a candidate for a seat in the House of People.

12. As to the grounds 3 and 4 above mentioned, we have no doubt that the contentions have no force. It is in fact a question of the Returning Officer being satisfied that a particular candidate who files a nomination paper is eligible to stand as a candidate or not. The Returning Officer scrutinized all the three nomination papers of the petitioner and has endorsed his certificate of scrutiny on them saying that not only the petitioner was eligible to stand but his proposer and seconder were also qualified to propose and second the nomination. The true copy of the entry in the Electoral Roll of Nagpur I Constituency of the Legislative Assembly, Madhya Pradesh, which accompanied the first nomination paper showed the petitioner's name as an elector in that Constituency and this copy of the entry satisfied the Returning Officer that the candidate was qualified to stand as a candidate for a seat in House of People. The Deputy Commissioners are the Election Registration Officers and with them are deposited final electoral rolls as required by rule 24 of the Representation of People (Preparation of Electoral Rolls) Rules of 1950 (*Vide Ex. R. 44*). The true-copy of the entry in the Electoral Roll which accompanied Ex. A-1 is signed by the Head Copyist for Assistant Superintendent of Deputy Commissioner's Office, Nagpur. There is a seal, on the back of the copy, of the office of the Deputy Commissioner, Nagpur. It is presumed that the Election Registration Officer (Deputy Commissioner, Nagpur) had authorised his Head Copyist to issue true copies of the entries in the Rolls under his signature. Section 114, illustration (2) of the Evidence Act raises a presumption that all official acts are regularly performed. It must be presumed that Deputy Commissioner, the Election Registration Officer, who is the custodian of the Electoral Rolls (*Vide Ex R-44*) had duly authorised his Head Copyist to grant true-copies. We rely on the decision in Election Petition No. 208 of 1952 (*Brij Nareshsingh Vs. Thakur Kukumsingh*) for the above view.

13. The Returning Officer was satisfied by the perusal of the copy of the entry filed by the petitioner that he was qualified to stand as a candidate. The copy is no doubt of the entry in the Electoral Roll of a Legislative Assembly Constituency but there is no separate Electoral Roll for the corresponding Parliamentary Constituency. A voter recorded in the Electoral Roll of a Legislative Assembly is also *ipso facto* a voter for the corresponding Parliamentary Constituency. Shri Dave, Election Officer's evidence is very pertinent on this point. There was no separate roll of Parliamentary Constituency with a printed label to that effect on it. Electoral rolls of some Legislative Assembly Constituencies formed also the Electoral Roll for the Hoshangabad Parliamentary Constituency.

14. As regards ground no. 5, the proposer and seconder of the petitioner were also electors or voters both for the Legislative Assembly Constituency and for Parliamentary Constituency as stated by Shri Dave, A. W. 3, and their names like the names of the proposer and seconder of the respondent no. 1 were verified from the same Electoral Roll of Legislative Assembly Constituency. They were thus rightly held by the Returning Officer as persons duly qualified to propose and second the petitioner's nomination.

15. As regards ground no. 6, the serial number borne by the nomination paper of Shri Gour, is 5. It was filed on 14-11-51. The first nomination paper of the petitioner is serial no. 1 and bears the date 13-11-51. Shri Gour was not thus a candidate on 13-11-51 when he proposed the petitioner's nomination. He could propose it.

16. For all the above reasons we are of the opinion that the nomination papers of the petitioner were rightly accepted as valid nomination papers and the right of the petitioner to present this Election Petition against the respondent no. 1 is not at all, affected. Nor could the petitioner's election have been declared void if he had been elected and a petition made questioning his election. It is also clear that the defects in the nomination papers, if any, being technical and not of substantial character, the nomination papers could not be rejected [see 33(4)]

Representation of People Act, 1951]. We find accordingly on issues 1, 7, 8(a), (b), (c), (d) and (e).

17. *Issues Nos. 2 (a), (b) & (c).*—We do not agree that counting of votes on different dates and at five different places was prohibited by the . . . Representation of People Act of 1951. This course was permitted by the Election Commission for speedy counting. Moreover Rule 44(2) *ibid* permits the counting to be done at more places than one if permitted by the Election Commission. Ex.R-47 and R-48 will show that the Election Commission permitted counting to be done at five places in the same Constituency. But proper is not situate in the Constituency. That did not, however, affect the election or its result materially. There is no substance in this grievance. Moreover Ex. R-49 would show that it was permissible to hold counting at a place outside the Constituency as . . . We hold . . . accordingly.

18. *Issue No. 3.*—It was conceded in the argument stage by the counsel for the respondent no. 1 that the petitioner's total of valid votes at the Piparia part of the Constituency should be 5391 and it is wrongly shown as 5321 in Form 14 (Ex. A-14 and also in the original Form 14). The total was made again by the Tribunal and it was found that the correct total is 5391. There is thus a difference of 70 votes. This number must be added to the total number of valid votes (65201) declared to be polled by the petitioner.

19. *Issues Nos. 4 (a) (b), 5(a) (b) (c) & 9(a) (b) (c) & (d).*—These are allied issues and are therefore discussed together. The petitioner, Shri Kamath's contention is that although the Election Commission of India has decided under Rule 28 (Representation of People Rules of 1951) that the ballot paper to be used for the purpose of voting at Elections to the House of the People from all Parliamentary Constituencies in Madhya Pradesh State shall have as a distinguishing mark—a thick green bar printed near the left margin, yet in the ballot boxes used at the Polling Stations Sobhapur Nos. 316 and 317 of the Sobhapur part of the Hoshangabad Parliamentary Constituency ballot papers bearing different marks were found. His contention was that all such ballot papers ought to have been treated as invalid votes and ought to have been rejected, therefore, under the mandatory provisions, of Rule 47 (1) (c) *ibid*. The Returning Officer, however, accepted these ballot papers as valid ones and counted them as such. The said action of the Returning Officer was attacked as illegal. The respondent no. 1, was said to have polled 301 such votes and the petitioner himself 62 and thus the respondent no. 1, Shri Syed Ahmad, thus secured a marginal advantage of 239 votes over the petitioner. The respondent no. 1, actually polled only 174 more votes than the petitioner as per the final results declared by the Returning Officer.

20. If the petitioner's stand is correct and if these votes polled both by the petitioner and the respondent no. 1, at the abovementioned polling stations at Sobhapur are really invalid votes and they are rejected by us, it is clear that the narrow margin of 174 votes in favour of the respondent no. 1, would be lost and the petitioner will be found to have polled a larger number of valid votes than the respondent no. 1.

21. Respondent no. 1's reply to the above contention of the petitioner is that the votes polled by him and the petitioner at Sobhapur polling stations Nos. 316 and 317 were valid votes and they were rightly accepted as such by the Returning Officer. He pleaded that the Presiding and Polling Officers at the above Polling Stations acted wrongly in issuing to the electors State Assembly ballot papers for being cast in the House of the People boxes and *vice versa*. There had been, according to him, an interchange of ballot papers owing to the inadvertence and a bonafide mistake of the Polling and Presiding Officers and the Returning Officer obtained in time instructions from the Election Commission for regularizing the issue of wrong ballot papers to the electors of the Parliamentary Constituency. The electors were not misled in any way in exercising their votes and the votes cast by them were perfectly genuine and valid votes and were rightly counted as valid votes by the Returning Officer.

22. In this very connection the respondent no. 1's own claim for treating as valid, votes which were, according to him, wrongly rejected by the Returning Officer at the Polling Stations No. 299 at Malkajra and at Polling Station No. 371 at Bamangaon, has to be considered. At these Parliamentary Polling Stations also ballot papers of the State Assembly were wrongly issued to the electors by the Presiding and Polling Officers. If these votes had not been rejected and had been accepted as valid votes, he would have secured a further advantage of 117 votes over the petitioner.

23. We have, therefore, to consider whether wrong ballot papers came to be delivered to the voters at the Sobhapur Parliamentary Polling Stations Nos. 316 and 317 on account of the mistake, negligent or inadvertent of the Presiding and Polling Officers and whether these votes found in the boxes of the petitioner and respondent no. 1 ought to have been rejected by the Returning Officer under Rule 47(1)(c) *ibid*, or the rule being only directory, they could not be rejected and are rightly counted as valid votes for reasons stated by the respondent no. 1.

24. The evidence of Sk. Charid : R.W. 2 who worked as the Presiding Officer at the two Sobhapur Polling Stations and of the other two Presiding Officers, B. L. Choudhari : R.W. 1 and Nandkumar Jyotishi : R.W. 3 gives us the correct picture of the arrangements at the Polling Stations and also how the work of giving the ballot papers to the voters and of exercising the votes took place. Inside each polling station or booth there were two compartments one for

keeping the boxes of the State Assembly candidates and the other for keeping the boxes of the candidates for the House of People Election. Each such compartment for election in any constituency is, in fact, a Polling Station for that Constituency as per provisions of Section 25 of the Representation of People Act. Opposite these two compartments sat one Polling Officer each whose duty was to hand over ballot papers to the electors. First the State Assembly voting papers were given by one of them and the voter after exercising that vote in the State Assembly compartment went next to the other Polling Officer who sat near the other compartment for taking his ballot paper for election of the House of People candidates. He got the ballot paper of the House of People Election from this Polling Officer and was then directed into the compartment where the boxes of the House of People candidates were kept. He then left the polling station after exercising the latter vote.

25. It is also abundantly proved that proper care was taken to see that voter getting State Assembly paper could not go to the House of People Compartment and *vice versa*. The Presiding Officers had obtained from the Returning Officer sufficient number of ballot papers for the two elections at the booth or booths in his charge. These Presiding Officers then in their turn gave the ballot papers for the two Elections to the respective Polling Officers under him who were placed by him in charge of the State Assembly Election and House of the People Election respectively. The correct procedure required to be followed under the rules by the two polling officers was duly explained to them and they went on giving to the electors ballot papers for the election of which they were in charge.

26. Although the arrangements in the polling stations were complete and the right procedure was duly explained to the Polling Officers, there yet occurred cases of interchange of ballot papers at these places *viz.*, Sobhapur, Bamangaon and Malkajra as is clear from the evidence of three Presiding Officers B. L. Choudhari, Sk. Chand and Nandkumar Jyotishi. From the perusal of Shri Gidwani's case decided by the Bombay Election Tribunal, we get it that similar interchange of ballot papers took place at numerous polling centres in India and in Bombay State alone in 23 such cases the Election Commission had regularized the use of State Assembly papers for House of People Election.

27. B. L. Choudhari : R. W. 1 has stated in his evidence that although he had allocated duties to the Polling Officers and given them instructions properly, he found at a certain stage of the poll that wrong ballot papers were before the Polling Officers. He saw that 130 House of People ballot papers were wrongly given to the voters for the State Assembly Election and about the same number of the State Assembly ballot papers were wrongly issued to the electors by the other Polling Officer in charge of House of People Election. He then put the right ballot papers before the respective Polling Officers and from that State Assembly ballot papers were given to the electors for State Assembly Election and House of People ballot papers for House of People Election. The mischief had, however, already been done in respect of 130 ballot papers of both the Elections. How the mistake occurred, B. L. Choudhari could not explain. We are, however, inclined to think that the mistake was probably committed by himself like Sk. Chand : R. W. 2 by giving wrong ballot papers to the polling Officers who were in charge of the two elections and he noticed the mistake after 130 ballot papers had already been delivered to the electors for the two elections.

28. Sheikh Chand has frankly admitted in his evidence that he could not easily distinguish the colour bars on the two sets of ballot papers and having already removed the wrappers from the bundles of the ballot papers, he could naturally not know which ballot papers were for State Assembly Election and which for House of People Election. The members of this Tribunal had the opportunity of observing the two kinds of ballot papers from close quarters and a note has been made by us in the deposition of Sk. Chand in para 11. of our observation as regards the colour of the bar on the House of People ballot papers. It was neither prominent nor could it be definitely said to be green. The difference in the colour of the bar on the two sets of papers was one of shade only. State Assembly papers had a dark brown shade and House of People papers a light brown shade. Otherwise they were alike.

29. The mistake in issuing wrong ballot papers might have been, in our opinion, either on the part of the Presiding Officer who not realizing properly the difference in the two sets of ballot papers gave wrong papers to the Polling Officers or the two polling Officers having received right ballot papers from the Presiding Officer and having kept them on the same table for some time picked up wrong heaps from the table. It is, therefore, clear the interchange of ballot papers was due to the bonafide mistake of either the Presiding Officer or the Polling Officer. It may be negligence or inadvertence on their part but it was still a bonafide mistake resulting in the interchange of voting papers.

30. We are unable to agree with the suggestion of Shri R. L. Sharma. Advocate for the petitioner, that the interchange of voting papers might have been due to interchange of the boxes in the two compartments or the polling officers might have change their seats. As regards the first suggestion, the arrangement of the polling booth is prescribed and the Presiding Officer cannot allow House of People boxes to be kept in State Assembly compartment and *vice versa*. Every official working in the booth knows the compartment of State Assembly boxes and the compartment of the House of People boxes. Each Polling Officer is distinctly given duties

concerning one particular election only. There could be, therefore, no interchange of boxes or change of seats.

31. One more suggestion was thrown by the same counsel that some one might have collected ballot papers from the voters and thrown them in the boxes wrongly. In the first place ballot papers thus obtained from voters would not be thrown in wrong boxes and moreover wrong ballot papers are to be found in the boxes of both the compartments and of all candidates. A regular series of wrong ballot papers were found in the boxes. There is no doubt thus that there has been an interchange of voting paper due to some kind of mistake on the part of the Presiding Officer or the Polling Officer and in any case it is quite clear that as regards Sobhapur Polling Stations where Sk. Chand was the Presiding Officer, the interchange of the ballot papers which was wholesale, was entirely due to his mistake. All the ballot papers which were found in the State Assembly boxes of both the booths at Sobhapur in respect of all the candidates were ballot papers of the House of People Election and *vice versa*.

32. Having held that there was thus an interchange of ballot papers at the Sobhapur Polling Stations due to a bonafide mistake of the Presiding Officer, Sk. Chand, the main question to be considered in this case is if the Returning Officer ought to have rejected the ballot papers found in the boxes of both the petitioner and the respondent No. 1 in these polling stations under Rule 47(1) (c) of the Representation of People Rules of 1951.

33. Rule 47 (1)(c) *ibid* lays down that the Returning Officer shall reject a ballot paper contained in a ballot box if it bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found, was used. The respondent No. 1 contends that this rule is directory only. The question, therefore, arises if this rule is mandatory or only directory. This rule along with the rest of the rules known as Representation of the People Rules of 1951 have been made by the Central Government after consulting the Election Commission, in exercise of the rule making power conferred on the Central Government under Section 169 of the Representation of People Act of 1951. Section 169 *ibid* itself says that these rules are made for carrying out the purposes of the Act. Under Art. 324(1) of the Constitution of India the superintendence direction and control of all elections to Parliament, State Legislatures etc. shall be vested in the Election Commission. Rules which the Central Government makes after consulting Election Commission pertain to various matters connected with the Election as mentioned in Section 169 (2). These matters are *inter alia* the contents of the ballot papers the manner in which votes are to be given and the manner in which scrutiny and counting of votes are to be made etc.

34. As regards the contents of the ballot papers there are Rules 20 and 28 (Representation of People Rules of 1951). Under the former the Election Commission may direct that, before any ballot paper, is delivered to any elector, it shall be marked with such official mark as may be specified by the Election Commission. No such official mark had been prescribed for this election. Rule 28 *ibid*, however, lays down that the ballot paper to be used for the purpose of voting at an election to which 'this' chapter applies shall contain a serial number and such distinguishing marks as the Election Commission may decide. Rule 23 prescribes the procedure to be followed before recording of votes and Rules 25 prescribe the manner of recording votes after receipt of ballot papers etc. Rule 47 then prescribes the grounds for rejection of ballot papers. There are numerous other rules in the Representation of People Rule of 1951 regulating the manner and conduct of election and other connected matters. But in the present case, we are only called upon to consider whether Rules 23, (read with Rule 28), 28 and 47 *ibid* are mandatory or directory.

35. Relying upon *Woodward Vs. Sarsons*, L.R. 10 C.P. 733, it was urged that the Representation of People Rules of 1951 were framed to carry out the object contained in the body of the Act, that they were directory only and it was enough if they were complied with substantially. The rules and regulations which were contained in the Schedule of the Ballot Act were called directory in *Woodward Vs. Sarsons* because they were only directions as such. They are thus styled in the Act itself. The decision in *Woodward Vs. Sarson* is rather helpful to and supports the petitioner's case. 294 votes were rejected in that case because the Presiding Officer through mistake had written serial numbers of the voters on the ballot papers. The voters were not at fault and they gave their votes genuinely to their candidates and yet the votes were rejected. That was because of Section 2 of Ballot Act which provided for rejection of such ballot papers and which was considered as mandatory. There can be no distinction in principle, only because what was provided in Section 2 of the old Ballot Act is now provided in our law in the statutory rules in the form of rule 47. The statutory rules are part of the enactment and have equal statutory force. In England also the provisions of Section 2 of the Ballot Act have been reproduced in Rule 48 (1) of Parliamentary Election Rules and it could not be said that Rule 48 (1) of the Parliamentary Election Rules is not now mandatory and is only directory because it is only a rule. If provisions of Rule 48 (1) in the English rules of 1949 are mandatory to-day, provisions of Rule 47 (1) (a) (b) (c) (d) of the Indian Rules are equally mandatory. What was contained in the directions in Schedule II of the Ballot Act is now reproduced in Rule 48 (2) of the English Rules and that part of Rule 48 may be said to be directory as the penalty of rejection is not prescribed in it and it rather leaves discretion to the Returning Officer to enter into the question of intention of the voters etc.



36. In considering whether rules framed under a statute should be regarded as directory, it should be borne in mind that the tendency in the modern legislation has been in the direction of placing in the body of an Act merely a few broad general rules or statements of principles and relegating details to statutory rules. This system delegates Legislative work to Executive Government by empowering it to make rules which do not require express confirmation by the Legislature. (*Ibbit's The Mechanics of Law Making*, page 139). It was in keeping with this tendency that fundamental provisions of the Ballot Act, matters regarded as of the essence in *Woodward Vs. Sarsons*, were incorporated in the English Parliamentary Election Rules. It is urged that the expression used in Rule 48 (1) of the Parliamentary Election Rules corresponding to the Section 2 of the old Ballot Act is emphatic and unambiguous. It is undoubtedly so but it is implicit in this contention that the general principle that statutory rules should be regarded as directory no longer holds and that the construction of the rules depends, as it must, upon the words used and other analogous considerations.

37. As to the rules *Maxwell observes* (at page 83) as follows:—

“Rules made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction and obligation or otherwise, exactly as if they were in the Act.”

In the Representation of People Act, 1951, similar provisions are wanting, though, we understand, the rules framed under Act were laid on the table of the Parliament for a period. The question is whether, in the absence of these provisions in the Act, the rules under the Act may not be construed strictly and rigidly. We might in this connexion point out that, though in *Woodward Vs. Sarsons* case the provisions in Schedule II were to have the same effect as the provisions in the Ballot Act, they were construed to be only directory having regard to the subject and the context. What we wish to emphasize is that undue importance need not be attached to a provision in the Act like, “shall be of the same effect” in regard to rules.

38. Referring to the words in an Act, “shall be of the same effect”, in *Institute of Patent Agents Vs. Lockwood* 1894, appeal cases 347, Lord Herschell observed as follows:—

“I have asked in vain for any explanation of the meaning of those words or any suggestion as to the ‘effect to be given to them, if, notwithstanding that provision, the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of law so made. The effect of a statutory rule, if validly made, is precisely the same that every person must conform himself to its provision and if in such a case a penalty be imposed, any person who does not comply with the provisions whether of the enactment or the rules becomes equally subject to the penalty. But there is this difference between a rule and an enactment that you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. Therefore, there is that difference between the rule and the statute. There is no difference if the rule is within the statutory authority, but a very substantial difference if it be open to consideration whether it be so or not.”

In our country, even Parliamentary enactments must not infringe the constitution and the statutory rules must be within the authority committed by the statute.

39. In the same case (1894 Appeal Cases 347), Lord Herschell observed at another place as follows:—

“No doubt there might be some conflict between a rule and a provision of the Act. Well there is a conflict sometimes between the sections to be found in the same Act. You have to try and reconcile them as best as you may. If you cannot you have to determine which is the leading provision and which the subordinate provision and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case, probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it.”

40. It has not been disputed that the Election Commission had authority to prescribe the contents of ballot papers to be used in General Elections. The authority of the Central Government to make Rule 47(1)(c) under Section 169 of the Representation of People Act, 1951, has not been challenged except in one respect. It has been urged that it should be regarded as unconstitutional in that, as interpreted in the present case by the respondent No. 1, it would take away the constitutional right of franchise. As we would have occasion to show hereafter, there is no such constitutional or fundamental right. The right is the creation of a statute and it must be exercised in the manner prescribed by the statute itself. In view of the foregoing considerations, we have come to the conclusion that the Representation of People Rules, 1951, and particularly Rule 47

*ibid* must be regarded as within the enactment "for all purposes of construction and obligation or otherwise."

41. When the language of a statute is plain and unambiguous, there is no scope for interpreting it and considerations of hardship, inconvenience or injustice ought not to weigh. Effect shall be given to the plain language used in the Statute. In this connection the following passage in *Maxwell on Interpretation of Statutes* at page 5 is note-worthy:—

"When the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation. *Absoluta sententia expositore non indiget*. Such language best declares, without more the intention of the law giver, and is decisive of it."

In this connection we also rely on the passages quoted at pages 129 and 130 of the *Interpretation of Indian Statutes by Jagadish Swarup, 1952 Edition*:—

Page 129.—"The primary and general rule of statutory construction is that the intent of the law maker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar. The Courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent."

Page 130.—"No Court ought to depart from the meaning of plain English words unless forced to do so by some very serious injustice or hardship which would arise from a literal interpretation; for instance, when the literal interpretation in the opinion of the Court would operate so harshly that the Court would be driven to suppose that there must have been some clerical mistake in the language of the Section or Clause of the Act. The mere fact, however, that the literal meaning of the words used would lead to an injustice would be no ground for disregarding the meaning."

42. The true aim of all rules of interpretation of statutes is to find the real meaning of the words used in an Act. For this purpose, it is always necessary to get an exact conception of the aim, scope and object of the whole Act. It has to be ascertained what the law before the Act was, what mischief or defect was provided for, what the actual provision is and why it was made. The Representation of People Rules, 1951, are based on the Parliamentary Election Rules, 1949. Before that the matter was governed by the Ballot Act.

43. Comparing Rules 20 and 28 of our Rules with the Parliamentary Election Rules of 1949 in England it will be seen that while stamping of the official mark on the back of the voting paper is prescribed in Rule 20 of the Parliamentary Election Rules, the contents of the ballot papers *viz.* the distinguishing marks on them have not been prescribed in the English Rules. In the Indian Rules (Representation of People Rules of 1951) rule 20 says that the official mark on the ballot papers may be prescribed by the Elections Commission. Rule 28, however, peremptorily lays down that there shall be separate distinguishing marks on the ballot papers to be used at different elections. The presence of distinguishing marks thus on a ballot paper appears to be of the essence of an election, whatever be the reasons for having different provisions in the Indian Rules from the English Rules. The purpose of a distinguishing mark on a ballot paper in India or of the official mark on the back of a ballot paper in England seem to be alike namely to lend authenticity to the ballot papers and to prevent fraudulent and improper use of the ballot papers. This appears to be one of the chief objects of the Election Law both in India and in England. Rules 23, 28 and 47 (1) (c) appear thus to be mandatory.

44. In England also rule 48 (1) regarding the presence of the official mark on the back of the ballot paper is even to day considered to be essential and imperative and its breach entails rejection of the vote. Even today the authority of *Woodward Vs. Sarsons* reigns supreme and unchallenged in England. In India also the presence of an official mark on the voting paper would be essential under the present rules if an official mark had been prescribed for Indian Elections. In *Hangu's case* reported at page 987 of Indian Election Cases by Sen and Poddar, Rule 81 which obtained then and which provided for rejection of ballot papers found without official marks on their back was held to be mandatory. In *Mohansingh Vs. Santoshsingh* also reported in Vol. I of Doabia's Indian Election Cases the rule providing for rejection of a ballot paper without an official mark was held to be mandatory. Similarly, there can be no doubt that Rule 47(1)(c) is mandatory as the breach of clause (a) violates secrecy of the ballot. Its counterpart in the English Rules 48 (1)(c) has always been considered to be mandatory. As regards the Rule 47(1)(d) also in the Indian Rules there can be no doubt that it is mandatory and a spurious ballot paper shall always be rejected.

45. Under sub-rule (2) of Rule 47 *ibid* voting papers mentioned in the sub-rule shall be rejected by the Returning Officer. It is pertinent to note in this connection that a ballot paper which is in contravention of Section 63 (1) is definitely regarded as void under Section 63(1) while a ballot paper which contravenes Rule 25 is not so void and yet both of them are placed on the same footing and have to be rejected by the Returning Officer under Rule 47 (2) *ibid*.

46. Under our Rules, the distinguishing mark takes the place of the obligatory official mark in the Ballot Act and in the English Rules. Want of the official mark on the back was fatal to the validity of the votes under the Ballot Act. *Woodward Vs. Sarsons* supra. It is good Law even under the English Rules now in force. There is no good reason why it should be different in this country which has borrowed its Rules from England.

47. Another rule is that construction is to be made of all the parts together and not of one part only by itself. There is often indispensable even when the words are the plainest, for the true meaning must harmonise with the subject and with every other passage in the statute. The rules which are to be construed are :—

“Rule 23. *Procedure before recording of votes.*—(b) shall thereafter cause the left fore-finger of the elector to be marked with indelible ink and then deliver a ballot paper or the requisite number of ballot papers to the elector.

Before delivering the ballot paper or papers the polling officer shall, where a direction has been issued in this behalf under rule 20, stamp the ballot paper or papers with such official marks as may have been specified under the rule.”

“Rule 28. *Ballot paper and its contents.*—The ballot paper to be used for the purpose of voting at an election to which this Chapter applies shall contain a serial number and such distinguishing marks as the Election Commission may decide.”

“Rule 47. *Grounds for rejection of ballot papers.*—(1) A ballot paper contained in a ballot box shall be rejected if:—

- (a) it bears any mark or writing by which the elector can be identified ;
- (b) in the case where a direction has been issued under rule 20 that the ballot paper shall contain an official mark, it does not contain the official mark ;
- (c) if it bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used ;
- (d) the Returning Officer is satisfied that it is a spurious ballot paper or that it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established.

(2) If the Returning Officer is satisfied that an elector has put into the same ballot box more than one ballot paper in contravention of the provisions of sub-section (1) of Section 63 and of rule 25, he shall reject all but one of such ballot papers at the time of counting the ballot papers contained in that box.

(3) A postal ballot paper which is not duly marked or on which more than one mark is placed against any candidate's name or on which votes are given to more candidates than there are members to be elected, or on which a mark is placed in such a manner as to make it doubtful to which candidate it has been given or on which the signature of the elector is not duly attested shall be invalid :

Provided that in the case of a plural member constituency where more than one vote can be given on the same ballot paper, if any vote is given by a mark which has not been duly made or by placing more than one mark against any candidate's name or if any of the marks is so placed as to render it doubtful to which candidate it has been given, only the vote concerned, but not the whole ballot paper, shall be invalid on that account.

(4) The decision of the Returning Officer as to the validity of a ballot paper contained in a ballot box or of a postal ballot paper or of a vote given on a postal ballot paper shall be final subject to any decision to the contrary given by a Tribunal on the trial of an election petition calling in question the election.”

48. When Clause (c) of Rule 47(1) of the Indian Rules is grouped along with these three other clauses (a), (b) and (d) which are as shown above mandatory in their character, there can be no doubt that even clause (c) was intended by the Legislature to be mandatory. If (c) was not so mandatory and was merely directory, it would not have been classed together with Clauses (a), (b) and (d) and would rather have been classed separately and rejection of vote would not have been prescribed for breach of that clause. In this connection the following passage at page 96 of the *Interpretation of Indian Statutes by Jagadish Swarup*, 1952 Edn. is also note-worthy:—

“There is a natural presumption that identical words used in the same section, or in different parts of the same Act are intended to have the same meaning and effect throughout the Act.”

It would not, therefore, be said that the expression “shall reject” in the case of Rule 47 (1) (a), (b) and (d) possesses a different meaning than the expression “shall reject” which is used as regards clause (c).

49. The very arrangement of Section 47 lends support to the above argument. Sub-rule (3) of Rule 47 would show that votes mentioned in sub-rule (3) are simply dubbed by the Legislature as invalid but the penalty of rejection has not been prescribed for these votes as is done in sub-rule (1) and sub-rule (2) of Rule 47. It is thus clear that the votes in sub-rule (3) have been put on a different level than the votes mentioned in sub-rule (1) and sub-rule (2) of Rule 47. The reason for thus separately grouping the votes in sub-rule (3) from the other votes, seems to be obvious and intentional. This sub-rule (3) appears to be the counterpart of sub-rule (2) of Rule 48 of the English Rules. Both these sub-rules in the Indian and the English Rules involve votes in which marking is required to be done by voters. This necessarily involves going into the question of intention of the voters to vote for any particular candidate. In the case of the votes in sub-rule (3) of our Rule 47, it is thus clear that the Returning Officer may go into the question of intention of the voter and he may, therefore, hold the vote to be invalid or otherwise although the sub-rule (3) has generally regarded the badly marked votes as invalid votes. This sub-rule may, therefore, be said to be directory but the sub-rules (1) and (2) of our Rule 47, do not appear to be so directory and it is not permissible for the Returning Officer to take into account any other extraneous considerations while deciding the question of the validity of the votes covered by Clauses (a), (b) (c) and (d) of sub-rule (1) and of the votes mentioned in sub-rule (2). There is no option but to reject the votes as soon as there is a breach of these provisions.

50. Another rule of construction is that a provision must be obeyed exactly when its non-observance is met with an invalidating or nullifying consequence. The following passage at pages 259 and 260 of the *Interpretation of Indian Statutes* by Jagadish Swarup, 1952 Edn., deserves attention in this context :—

“ A statute is always understood to be directory when it contains matter merely of direction, but not when those directions are followed up by an express provision, that, in default of following them, the act shall be null and void. If the Act is directory its disobedience does not entail any invalidity that is a disregard or directory provisions in an Act will not make the transaction void altogether. If the Act is mandatory, disobedience entails serious legal consequences amounting to the invalidity of the act done in disobedience to the provision. The intention of the Legislature should be construed as mandatory, if the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed. Statutes are not directory when to put them in that category would result in serious impairment of the public or private interests that they are intended to protect.”

It was urged that there was no nullifying provision attached to the failure of the Returning Officer to reject ballot papers as provided by Rule 47(1)(c) *ibid.* We might, in this connection, refer to Section 100(2)(c) of the Act, which provides as follows:—

“ Subject to the provisions of sub-section (3), if the Tribunal is of opinion:—

that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form ; the Tribunal shall declare the election of the returned candidate to be void.”

But we think that rejection contemplated by Rule 47 (1)(c) itself is the invalidating consequence of disobedience of provisions against evasion in use of the prescribed ballot papers. We consider that public policy required a provision like 47(1)(c) to guard against fraudulent use of ballot papers. We consider that use of the prescribed ballot paper was considered as essential to the act or the thing done and it must be so construed.

51. It is also a well recognized principle of interpretation that similar words used in the Act and in the Rules made under the Act will have the same meaning (*Vide* Rule 20 of the General Clauses Act of 1897). Referring to Section 32(4), we get that a nomination paper which is not received until 3 p.m. on the last date appointed under Clause (a) of Section 30 *ibid.* shall be rejected. Similarly, Section 63(2) lays down that if an elector gives more than one vote to any candidate in contravention of Clause (1) of Section 63 then only one vote will be taken into account and all others shall be rejected as void. If these words “ shall be rejected” impose on the Returning Officer an imperative duty to reject the nomination paper under Section 32 (4) and the voting paper under Section 63 (2), it could not be said that similar words “ shall reject” occurring in Rule 47 have to be interpreted otherwise. They cannot mean “ may reject” so far as Rule 47 (1) is concerned.

52. It will also be seen that if Rule 47 (1)(c) was intended to be directory only they would have provided in Rule 47 some such provision as is contained in Section 36 (4) where it is laid down that the Returning Officer shall not reject any nomination a paper on the ground of any technical defect which is not of a substantial character. The Legislature has not treated the breach of Rule 23 read with Rule 28 or Rule 28 or breach involved in Rule 47 (1)(c) on the same footing as the breach contained in Section 36 (4). The defect is not a technical defect but appears to be of a

substantial character. The absence of similar provision like section 36 (4) in the scheme of Rule 47 shows clearly the intention of the Legislature to treat Rule 47(1)(c) not as directory but mandatory and imperative because a ballot paper with a different distinguishing mark is not to be treated as a ballot paper for that election.

53. It is held in *Shri Gidevani's case in Petition No. 5 of 1952*, decided by the Bombay Election Tribunal that Rule 47(1)(c) is directory. We respectfully differ from this view. We also respectfully differ from the reasons given by that Tribunal for the view that Rule 47(1)(c) is directory. That view and the reasons given in support of the same in that case are open to criticism. Firstly in para 8 of their judgment they have observed that all the Rules framed under the Act are directory. It is a dogmatic statement not supported by reasons. The effective answer to this argument is that the absolute provisions in the Ballot Act are not contained in the English Rules of 1949. It could never be contended that all these rules are directory. In para 9 they have observed that directions and instructions issued by the Election Commission have not the force of rules. This cannot be wholly correct as it will depend on the nature and character of these directions. In para 10 they have observed that the description of the ballot paper was of no material consequence and that the voters could not have been misled. This is in fact besides the point as the rule making authority has formulated Rule 47(1)(c) in an imperative manner. What the reasons and motives for framing the rules in this way were, cannot be a matter for the Tribunal to investigate and no inquiry can also be made if the voters were misled or not.

54. Further in para 11 they have depended upon the views of the Election Commission in support of their view that rules were directory. We humbly differ from such a reasoning. The views of the Election Commission referred to may themselves be wrong and open to criticism. They cannot have the binding force of a judicial decision. The action of the Election Commission in regularizing the issue of wrong ballot to the voters after the polling was over is itself *ultra vires* and it could not be called in support of the view that the Rule 47(1)(c) is directory. The question raised similarly in para 12 of Bombay Judgment whether the votes were genuine and whether they represented the true intention of the elector was also beside the point as rule 47 does not demand any inquiry on these lines and it, on the other hand, lays down explicitly that if wrong distinguishing marks are present on the ballot papers, they shall be rejected. Reliance was placed by them on the decision in *Abdul Majid Vs. Syed Ahmad* and also in *Mohansingh Vs. Santosh Singh*, reported in Vol. I, Doabia's Indian Election Cases page 192. But it appears that there was no rule in the former of the two cases providing for rejection of a ballot paper under certain circumstances. Only rule 26 which obtained there was referred to and it merely said that the Polling Officer shall give to an elector a ballot paper conforming to Form XI, bearing an official mark. No rule for rejecting ballot papers is discussed or referred to in the former case. As to the latter *Mohansingh Vs. Santosh Singh*, Rule 8 of Chapter 7 for rejecting a ballot paper without an official mark was held to be imperative though as regards rule 16 of Chapter VI it was held to be directory because it laid down how the ballot papers will be marked by the voters.

55. They further relied on a certain passage from *Maxwell* at page 326 regarding rules of interpretation. The passage as quoted certainly lays down correct law but if the prescriptions of the same statute also provide the consequence of the failure of such public duty then both the provisions have to be construed together. In the present case Rules 23, 28 and 47 have all to be read together and the result necessarily follows that all these provisions together have to be strictly complied with. The decision in the Bombay Case is moreover silent as regards Rule 47(1)(a) (b) and (d). Surely it could not be said that these are also directory in their opinion like Rule 47(1)(c). Their observation similarly that meticulous compliance of Rule 47(1)(c) is not necessary and only substantial compliance is enough, does not appear to be correct. Rule 47, admits of no such distinction as the ballot papers either have or do not have the prescribed distinguishing marks. Rule 47 enacts clearly and definitely the law for deciding as to which ballot paper should be rejected by the Returning Officer. Rule 47 is for invalidating certain ballot papers and for rejecting them while Rule 48 which follows, speaks of valid votes which have to be counted. Rule 48 thus operates on the basis of Rule 47.

56. The interpretation put by that Tribunal on the words in rule 47(1)(c) "authorised for use" at the Polling Stations does not appear to us as correct. Section 25 of the Representation of People Act of 1951 seems to be ignored. The Polling Stations for State Assembly Election and for House of People Election are entirely different under Section 25 and it is not correct to style the place in which these two Polling compartments for two different elections are situate as one Polling Station. It would be seen that the Bombay Tribunal's view about the words "authorised for use etc." was not approved of in Election Petition No. 122 of 1952 decided by the West Bengal Tribunal.

57. The view of the Bombay Tribunal further that the Election Commission could validate any ballot paper after it was used does not, in our humble opinion, appear to be correct. It is clear that under Rules 28 and 47, the Election Commission has no such powers and any instructions or directions issued by the Election Commission for validating the ballot papers after they have been actually used are *ultra vires*. Rule 28 permits them to issue their directions regarding the distinguishing marks once only and that before the voting papers are actually supplied to the Returning Officers and Presiding Officers for being handed over to the voters at an election. Otherwise ballot papers with different marks would be valid ballot papers in the same election, an anomalous result.

58. The basic error committed in Gidwani's case is that, because certain rules, expressed in the Ballot Act to be directory were construed as directory in *Woodward Vs. Sarsons*, all provisions in Rules, as distinguished from the body of the Act, were presumably regarded as directory. We have shown that the legal principle is not acceptable. We have further shown that rules must be interpreted with due regard to the words used, the subject and the context.

59. It was contended for the respondent no. 1 that statute must be construed with regard to its subject matter and object and hence in the absence of a statutory definition, a word is to be understood in the sense in which it best harmonises with the object which the enactment has in view. It was thus argued that the words "shall reject" must be construed as to give effect to and promote the object of the Representation of People Act which is to enable a voter to exercise his constitutional right of vote. It is sufficient to point out in this connection that it is not a constitutional or a civil right as in England but it is only a right created by the statute or by a special law and it is subject to all the limitations imposed by that Statute or the special law as held by the Supreme Court in 1952, *Supreme Court 64, N.P. Purnuswami Vs. Returning Officer*. The aim and object of the Representation of People Act is not only to facilitate the giving of a vote by a voter but to maintain the secrecy of the ballot and also to prevent fraudulent and improper use of a ballot paper by prescribing various provisions in the Act or in the Rules. Rule 47(1)(c) will have thus to be considered from the view point of all these important aims of the Representation of People Act. Looked at thus the rule will be capable of no other interpretation than that it is a mandatory rule requiring implicit obedience. Any other interpretation would leave loop-holes, and permit fraudulent practices. In this connection the following passage from *Maxwell on Interpretation of Statutes at page 336* (5th Edition) also deserves attention:—

"They must look at hardships in the face rather than break down the rules of law; and if, in all cases of ordinary occurrence, the law, in its natural construction, is not inconsistent, or unreasonable, or unjust, that construction is not to be departed from merely because it may operate with hardship or injustice in some particular case."

60. For the above reasons we differ respectfully from the decisions in the Gidwani Case and two other Election Petitions in which decision in Gidwani's case has been accepted as correct. The Rule 47(1)(c) is mandatory and not directory and the Returning Officer had no authority or right to accept as valid the invalid ballot papers found in the House of People boxes in the Sobhapur Polling Stations. Those ballot papers obviously bore different marks than they should have borne according to the prescription of Rule 28. They ought to have been rejected, therefore, as invalid votes under Rule 47(1)(c).

61. The Tribunal verified from the bundles of the used ballot papers which were polled in favour of the respective candidates in this Election at the Sobhapur Polling Stations Nos. 316 and 317, in the presence of the counsel of the parties and it was found that Shri Syed Ahmad, respondent no. 1, had secured 301 votes in these two Polling Stations and Shri Kamath the petitioner, 62 and the other two candidates 34 and 46. It was also found that all these ballot papers which were found in the boxes of these candidates at these two House of People Polling Stations of Sobhapur bore the chocolate or brown bar which was prescribed for the ballot papers to be used at the State Assembly Election. It was also found that they belonged to the same series of the State Assembly ballot papers which were mentioned in form No. 10 of the two Polling Stations Nos. 316 and 317 referred to above as having been supplied to the electors. It is thus clear that the ballot papers which were found in the boxes of the petitioner and the respondent no. 1 at these Polling Stations bore distinguishing marks other than those prescribed for the voting papers to be used in the House of People Election. As already found above, these votes were votes which ought to have been rejected by the Returning Officer as they were hit by Rule 47(1)(c) *ibid*. When these votes—62 of the petitioner and 301 of the respondent no. 1 are rejected and left out of account, the respondent no. 1 will be found to lose the marginal advantage of 239 votes which he had gained over the petitioner as regards the Sobhapur Polling Stations Nos. 316 and 317. Issues 4(a) and (b) are decided accordingly.

62. As for issues 5 (a), (b) and (c), we have already observed that the decision of the Election Commission regarding the different distinguishing marks which they prescribed for the two kinds of elections taken under rule 28 was final and they could not validate the wrong issue of ballot papers at Sobhapur Polling Stations as done by them. We have already held that these votes were invalid and ought to have been rejected as hit by Rule 47(1)(c). They cannot be held to be valid for any reason. That wrong ballot papers were issued to voters owing to a mistake of the Presiding Officer or Polling Officers cannot be a ground for treating these votes as valid votes as rule 47(1)(c) *ibid* is peremptory and does not admit of any such considerations as already discussed before.

63. As regards the issues 9(a), (b), (c) and (d), we are of the opinion that the petitioner's votes at Malkajira and Bamanganon Polling Stations were correctly rejected as invalid votes. They are also hit by Rule 47(1)(c) as they bore different distinguishing marks than those prescribed for the voting papers of a House of People Election. They cannot be treated as valid votes. It is true that in these cases also wrong ballot papers came to be delivered to the voters because of the mistake of the Presiding Officer or Polling Officer but that circumstance cannot help the respondent no. 1.

64. *Issues Nos. 6 (a), (b), (c), (d) and (e).*—It is true that certain discrepancies are to be noticed in the account of the ballot papers. The petitioner has quoted in para. 11 of this petition, 16 instances in which the discrepancies are on the face of the record. From 10 of these 16 items (polling stations) showed certain numbers of voting papers which should be found in the boxes. However form 14 showed a greater or smaller number of valid ballot papers as actually found in the boxes. We verified these discrepancies and the result of our verification is contained in the order-sheet of 17-3-53. We found that about 13 and 1 more votes were shown in the form 14 as polled by the respondent no. 1 and the petitioner respectively, than were actually found in the boxes. Other discrepancies could not be explained and some were clearly inadvertent.

65. It is clear from these mistakes and discrepancies that proper checking and verification were not done by the Returning Officer but having regard to the voluminous work involved it does not appear to have been possible for the Returning Officer to check properly and avoid such mistakes. This has not, however, materially affected the result of the election and there is not much substance in the complaint. It was further complained that a large number of boxes were opened simultaneously for counting the votes but it was permissible to do so as stated by the Election Officer, Shri R. S. Dave : A. W. 3. Shri Dave has also stated that the work of clerks who counted was supervised by an officer of a Gazetted rank and the candidates and their counting agents were given all facilities to supervise the work. We do not think, therefore, that the petitioner was prejudiced in any way and there is any force in this grievance. It is not moreover shown that very grave errors have crept in or that the result of the election was affected materially by such absence of proper verification. Some discrepancies were brought to our notice and we readily looked into them. We do not think that the case demands a complete recount. We hold accordingly.

66. *Issue No. 10.*—The question of intention of the voters may be required to be considered while considering the effect of the non-compliance of the rules. But no inquiry will be made into it. Their intention may be seen only from the manner in which the voters have voted.

67. *Issue No. 11.*—Having held that the Rule 47(1)(c) is mandatory we have to consider what is the consequence of that view on the present case. Any non-compliance of that rule or even acceptance of other votes which are void will have no consequence except when thereby the result of the election is materially affected as provided in Section 100(2)(c) of the Act. Here Rule 47(1)(c) alone was not disregarded. There was also a compliance with Rule 23 read in connection with Rule 28 of the Representation of People Rules of 1951.

68. It has been urged before us that there is no express provision or rule that a ballot paper having a particular distinguishing mark should be delivered to an elector for any election. We are unable to agree with this view. No official mark is prescribed under Rule 20 *ibid*. No serial number was prescribed by the Election Commission acting under the statutory rule 28. The only insignia of authenticity prescribed by the Election Commission acting under the statutory rule 28 is distinguishing mark. Do away with it and there can be no authoritative certainty as to what ballot paper ought to have been used. In that event it could not be said with reference to the rules that any ballot paper used at a polling station is less authentic than any other, the reason is that there would be no authorized test for authenticity and genuineness. This view, it will be seen, must lead to confusion, besides leaving considerable scope for fraudulent practices. This is not all. Such a view will render otiose rule 28 and thus violate another well accepted rule of interpretation. In our view the ballot paper intended to be used and delivered under rule 23 *ibid*, is the ballot paper having the distinguishing mark prescribed under Rule 28 *ibid*.

69. Here the petitioner wants us to consider the effect of the non-compliance of Rule 47(1)(c). That non-compliance is founded upon the initial disregard of Rule 23 *ibid* read with Rule 28. Indeed these sections are so intimately connected that one cannot be considered apart from the other. In this case we have not only to see how the disregard of a particular rule has affected the petitioner. We have to consider how the noncompliance of the two rules affected the election as a whole. In our view we can go further. In fairness we must consider the cumulative effect of a violation of law or disregard of rules to see if the result of the election was thereby materially affected. The true test in our opinion of determining whether the result of the election is materially affected by the noncompliance of any rules is to see what would have happened if these rules were strictly obeyed and not violated. In this particular case, by sheer mistake, caused no doubt by the faintness of the distinguishing mark, the officers employed at the Sobhapur Polling Station gave to the Parliamentary electors ballot papers meant for use at the State Assembly election. If that mistake had not been committed and there was no noncompliance of rule 23 (read with rule 28) we are sure that the correct ballot papers would have been found in the box of the respondent no. 1. In effect the initial noncompliance of the rule 23 read with rule 28 committed by the election officers makes for the disregard of Rule 47(1)(c) and to the same extent too. In other words if rules 23 and 28 had not been disregarded, the respondent no. 1 would have got all those votes which it is claimed must be rejected. The total effect of the disregard of the above rule 47(1)(c) and 23 read with rule 28 is that the respondent no. 1 would have been where he is now except that petitioner would get about 80 more votes on account of mistake in calculation. We, therefore, hold that the result of the election has not been materially affected by the non-compliance of this rule and there is therefore, no case for declaring the election of the respondent no. 1, to be void.

70. The facts of the present case do not fall to be governed by any other part of Section 100(2)(c). It is not a case in which there has been an improper reception of a vote or refusal thereof, nor of reception of votes which are void. It was argued that void votes were accepted in this case by the Returning Officer. We do not agree that these votes which the Returning Officer accepted were void. The reason is that the votes which are to be treated as void or invalid have been specifically so described in the Act and in the rules (*vide* Section 62 and 63 and Rule 47(3)). We wish to stress that the Act and the Rules make a distinction between void and invalid votes and ballot papers which must be rejected.

(Sd.) B. K. PURANIK, *Chairman,*

Election Tribunal, Hoshangabad.

(Sd.) B. CHATTERJI, *Member,*

Election Tribunal, Hoshangabad.

*The 27th March, 1953.*

1. I have had the privilege of perusing the proposed order of my learned colleagues, Shri B. K. Puranik and Shri B. Chatterji, who have dealt with elaborately all the contentions raised by the parties to this petition, and have recorded their findings thereon. I agree generally with most of the conclusions arrived at by them in their order referred to above ; except their finding that the provisions of Rule 47(1)(c) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, are mandatory, which, I regret, I am unable to accept as being the correct proposition of law. With due respect, I submit I am not prepared to concede that these provisions are mandatory. On the contrary, I am clearly of the opinion, for the reasons stated hereafter, that these provisions are merely directory and that it is sufficient if they are complied with substantially in a case like this.

2. That there was interchange of ballot papers—wholesale in the case of the Polling Stations Sobhapur Nos. 316 and 317 in Sobhapur part of Hoshangabad Parliamentary Constituency and partial in the case of Malkajra, Polling Station No. 299, of the Hoshangabad Parliamentary Constituency and Bamangaon Polling Station No. 371 of Hoshangabad Constituency—is amply proved from the evidence on record. The ballot papers meant for the electors of the State Legislature were exchanged with the ballot papers meant for the electors of the House of People and *vice versa*. My learned brothers, Shri B. K. Puranik and Shri B. Chatterji, have in their judgment discussed the evidence in this connection at some length, and have, for very cogent and weighty reasons, which I need not reiterate here, come to the conclusion that this was clearly a case of interchange of ballot papers. They have further remarked, to quote their own words, "It is, therefore, clear that the interchange of ballot papers was due to the *bona fide* mistake of either the Presiding Officer or Polling Officer. It may be negligence or inadvertence on their part but it was still a *bona fide* mistake resulting in the interchange of voting papers". (concluding portion of para. 19 of their judgment). With these remarks I respectfully agree.

3. Now, having already found that there has been, in fact, interchange of ballot papers in the case, due to the mistake of the officers entrusted with the conduct of the poll, the next thing we have to see is how far this mistake has affected the election and the manner in which these ballot papers should now be dealt with. The ballot papers for the State Assembly and those for the House of People are similar ; except that on the left margin of the Assembly ballot papers there is chocolate coloured bar and on the left margin of the Parliamentary ballot papers the distinguishing mark is a green coloured bar. We have noted our observations as regards the coloured bars on two kinds of voting papers in the course of recording evidence of Shri Sk. Chand. R. W. 2 who was the Presiding Officer at Sobhapur Polling Stations (page 3 of his deposition) as under :—

"For a long time even after having seen the two kinds of voting papers most of us were under the impression that the voting papers of the House of People were still to be taken out from the bundles although both these kinds of papers were placed before us. The voting papers of the House of People do not appear to have the green bar prominently, nor the colour of the bar on these can be definitely said to be green. The difference between the colours of the two bars on the two kinds of papers is one of shade. The Assembly papers have a light shade of the brown colour. On both are printed the words "M.P." in the centre. The colour of the back-ground of both the ballot papers is *pinkish*".

Besides these distinguishing marks of bars of different colours there are separate series of serial numbers printed on the two kinds of ballot papers. If the officers had been careful the mistake could have been avoided or detected. In fact, in one case *viz.* : Bamangaon Polling Station No. 371 the mistake was detected in the course of polling. Shri B. L. Choudhari who was the Presiding Officer at this polling centre deposes, as R.W.1, about this incident, *vide* para 6 of his deposition as under :—

"After a while and after the polling had commenced, I happened to go to these Polling Officers of booth No. 1 and I found that wrong ballot papers were in front of them. The ballot papers meant for the State Assembly were with the other Polling Officer



who was in charge of the Parliamentary Polling and *vice versa*. I found that about 130 ballot papers were issued by each polling Officer wrongly in the above manner. I then ordered and arranged that the right ballot papers were in charge of the right Polling Officers and I had directed them to issue them from that moment in the correct way”.

This case is not the solitary instance of such mistakes having been committed. Similar cases of interchange of ballot papers have occurred in other parts of India. Three petitions namely, (i) Election Petition No. 5 of 1952 decided by a Bombay Tribunal, (ii) Election Petition No. 39 of 1952 decided by an Assam Tribunal and (iii) Election Petition No. 122 of 1952 decided by a Bengal Tribunal, published in different issues of *Gazette of India Extraordinary* and brought to our notice involve, *inter alia* this question of interchange of ballot papers.

4. The interchange of ballot papers in this case has been held to be due to *bona fide* mistakes on the part of officers concerned. We have next to see (i) whether the procedure of polling followed at this polling station was or was not according to law and (ii) whether the result of the election has or has not been materially affected by reason of this interchange. As regards (i) there is ample evidence on record to show that the election at these polling stations was conducted properly and correct procedure followed. Shri B. L. Choudhari, R. W. 1, who was the Presiding Officer at Bamangaon Polling Centre, Shri Sk. Chand, R. W. 2, who was the Presiding Officer for the Sobhapur Polling Station, and Shri Nandkumar Jyotishi, R. W. 3, who was the Presiding Officer at Malkajira Polling Station, give graphic description of the manner in which the polling was conducted at their respective polling stations. Two sets of ballot papers were distributed by them to the Polling Officers in charge of these booths. The Assembly votes were first cast and after that the voters received Parliamentary ballot papers to cast votes in different compartments where the Parliamentary ballot boxes were kept. The electors acted in good faith and were not confused or misled by reason of any interchange of ballot papers. The procedure of voting by ballot was followed to the fullest extent and every elector appears to have voted as he wished or intended. I have thus not the least hesitation to hold that correct procedure was followed and the polling was conducted properly at each of these polling stations. As for No. (ii) there is no evidence on record to show that this interchange of ballot papers has in any way materially affected the result of the election. The petitioner's case is that if these interchanged ballot papers at Sobhapur Polling Station had not been counted and if these had been rejected, as required by Rule 47(1)(c), the petitioner would have secured a majority of valid votes, the petitioner would have received 65,139 valid votes and the respondent No. 1, 65,074 valid votes only (*vide* para. 10 of the petition). It is nowhere stated nor is it the case of the petitioner that if the electors had been given correct valid papers at this polling station, they would have voted for the petitioner or the result of the election would have been materially affected. For, the electors knew that the ballot papers that were delivered to them by the polling officer in charge of the Parliamentary Polling Booth at Sobhapur Polling Station were meant for the House of People election and they accordingly put their ballot papers into the boxes of the candidates for whom they intended to vote for the House of People. To this extent, I think, we can go into the question of intention of the electors. I am therefore of opinion that the result of the election has not been materially affected by reason of this interchange of ballot papers.

5. The petitioner has based his objection to these interchanged ballot papers, for which neither the electors nor the candidates can be blamed, on a technical ground. As already stated, this interchange of ballot papers was due to *bona fide* mistakes on the part of the officers concerned, and the matter was one over which the voters had no control. It does not, therefore, stand to reason why the voters, in a case like this, should be disfranchised and why a candidate who has obtained more votes should be allowed to suffer because of this interchange. I may, in this connection, refer, with advantage, to a passage from an English case where the official stamp on ballot papers was prescribed as ten perforated holes, but a particular ballot paper which was challenged contained only one hole. The Judge of the Kings Bench Division who decided that case, while allowing that vote to the petitioner, made the following observations :-

“Although it was not perfectly done, we think the paper ought not to have been rejected on that account. In every other respects the vote is perfectly plain and no other substantial objection can be raised to it. We think that in a case where the voter is in no sense to blame, where he has intended to vote and has expressed his intention of voting in a particular way, and, so far as this part of the transaction is concerned, has done every thing that he should, and the only defect raised as a matter of criticism of the ballot paper is some defect on the part of the official machinery by which the election is conducted, especial consideration should (and, no doubt, would) be given in order that the voter should not be disfranchised. So far as this one vote is concerned it is quite clear from the cross in the petitioner's section that the voter did all that he could possibly do to record his vote. The only challenge was the fact that the official stamp had been imperfectly applied. We are satisfied that there was the clear intention to apply it and we shall allow that vote for the petitioner”.

[*Re South Nawington (Kingstone-upon-Hull) Municipal Election* petition. Lewis vs. Shephardson, Kings Bench Division reported in the All England Law Reports. 1948 (2) page 503 at page 507.]

On the analogy of the aforesaid English case to this case we may construe our Rules equally liberally and refuse to reject the interchanged ballot papers, I think.

6. So far, I have dismissed the question of interchange of ballot papers and their admissibility for the purposes of votes and counting of these votes, from a general and broad point of view. Coming to the rules themselves, Rule 28 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951 (hereafter called Rules) lays down that the ballot paper to be used for the purpose of voting at an election to which the charter applies shall contain a serial number and such distinguishing mark as the Election Commission may decide; and Rule 47 (1) (c) thereof says that a ballot paper contained in a ballot box shall be rejected if it bears serial number or mark different from the serial number or marks of the ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used. It may be noted that these and the allied rules have been framed under section 160 of the Representation of the People Act, 1951 (XLIII of 1951), which gives power to the Central Government after consulting the Election Commission to make rules for carrying out the purposes of this Act. Most of these rules contain directions for the guidance of the officers entrusted with the carrying out the purposes of this Act: the purposes of the Act being to provide for the conduct of elections to the Houses of Parliament and the House or Houses of Legislature of each State, the qualifications and disqualifications for Membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. Now from a careful perusal of Rule 28 it is abundantly clear that it contains a direction intended for the Election Commission who may devise a distinguishing mark for the ballot papers to be used for the purpose of voting at an election. No duty or responsibility is cast on the voter or elector in this connection. What happens if the Election Commission, either deliberately or through inadvertence, neglects to decide such distinguishing marks and the ballot papers are allowed to be used for the purpose of voting at an election without such distinguishing marks, the election otherwise having been conducted properly? Will all these ballot papers be discarded and thrown away because of this want of distinguishing marks and the electors disfranchised for no fault of theirs? This would be unfair and unjust so far as the electors are concerned. Proper course in such a case would be to disregard this omission on the part of the officer and treat the ballot papers as valid votes. For, nowhere in the Act, or Rules, such votes have been declared to be void or invalid votes, although there are express provisions in the Act itself declaring certain types of vote as void votes. In section 100(2)(c) of the Act two classes of votes are considered *viz.*: Improper reception or rejection of a vote and a void vote. This shows that Legislature has made a distinction between these two kinds of votes.

7. It may further be noted that no penalty has been provided either in rule 28 or rule 47(1)(c) and it is nowhere declared that such ballot papers which do not bear the distinguishing marks, as prescribed by the Election Commission, will *inso facto* be deemed to be void or invalid. In rule 47(1)(c) it is stated that such ballot papers shall be rejected and in sub-rule (4) thereof it is stated that the decision of the Returning Officer as to the validity of the ballot paper contained in a ballot box..... shall be final subject to any decision to the contrary given by Tribunal etc. etc. This shows that the rejection or acceptance of such ballot papers is open to further investigation and decision by a Tribunal. I may, in this connection, refer to a passage from Craies on Statute Law, 5th Edition (1946), page 246 which explains the distinction between absolute and directory provisions in the same Act.

It runs :—

“Where a Statute does not consist merely of one enactment but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only while others to be considered absolute and essential, that is to say, some of these provisions may be disregarded without rendering invalid the thing to be done, but others not. For, “there is known distinction” as Lord Mansfield said in *R. Vs. Loxdale*, “between circumstances which are of the essence of a thing to be done by an Act of Parliament and clauses merely directory.” In *Pearse Vs. Morrice Tanton*, J. said that he understood “the distinction to be, that a clause is directory where the provisions contain mere matter of directions and nothing more, but not so when they are followed by such words as, that anything done contrary to these provisions shall be null and void to all intents.”

Similar views have been expressed in Jagdish Swarup's “Interpretation of Indian Statutes” 1952 Edition at pages 258 and 259. It is stated that the scope and object of a statute are the only guides in determining whether its provisions are directory or imperative. According to this author,—

“A statute is always understood to be directory when it contains matter merely of direction, but not when those directions are followed up by an express provision, that, in default of following them, the act shall be null and void” (page 259). “The general Rule”, as stated by the author, “is that unless the Legislature uses negative words or words showing an intention to treat the observance of a Rule of Procedure as essential the rule will ordinarily be treated as a direction only”. (Page 264).

So, it is necessary for a rule to be mandatory that it must be followed by a nullification clause, namely, by such words as, that anything done contrary to these provisions shall be null and void to all intents. Examining rule 28 in the light of the principles stated above, we find that there is nothing, in the rule to show that anything done contrary to this rule or the provisions of this rule, shall be null and void to all intents. In this view of the matter, rule 28 cannot be mandatory, but it is merely directory. Since rule 28 is directory the violation of that rule *viz.* use of ballot paper minus these contents, which are required to be filled under this rule, is the act done in contravention of that rule and this departure can be disregarded without rendering the ballot paper invalid. For, it is an established principle of law that directory statutes are to be construed liberally and it is sufficient if directory enactments be obeyed and fulfilled substantially. Now, the provisions of rule 47(1)(c) being dependent on rule 28, the same cannot but be directory, rule 47(1)(c) obviously relates to the ballot papers bearing serial numbers or marks referred to in rule 28.

8. In the present case we are dealing with the interpretation of rules with special reference to the proposition whether, where a mistake is committed by an official, the rules ought to be treated as mandatory or directory. In this connection I need only refer to the following relevant passages from authoritative books on interpretation of Statutes to clear up the position:—

"In the first place, a strong line of distinction may be drawn between cases where the prescription of the Act affect the performance of a duty, and where they relate to a privilege or power. Where powers or rights are granted, with a direction that certain regulations or formalities shall be complied with, it seems neither unjust or inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred : and it is therefore probable that such was the intention of the Legislature. *But when a Public duty is performed in a certain manner, or within a certain time or under other specified conditions, such may well be regarded as intended to be directory only*, when injustice or inconvenience to others who have no control over those exercising the duty would result, if such requirements were essential or imperative". (Maxwell on the Interpretation of Statutes, 4th Edition, page 556.)

"On the other hand, when the prescription of a statute relate to the performance of a public duty ; and to affect with invalidity acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the Legislature ; they seem to be generally understood as mere instructions for the guidance and governance of those on whom the duty is imposed, or, in other words, as directory only". (Maxwell on the Interpretation of Statutes, 4th Edition. pages 564-65.)

"To hold that an Act which required an officer to prepare and deliver to another officer a list of voters on or before a certain day, under a penalty, made a list not delivered till a later day invalid, would in effect, put it in the power of the person charged with the duty of preparing it, to disfranchise the electors, a conclusion too unreasonable for acceptance". (Maxwell, 4th Edn. page 565.)

"In considering any question which he is empowered to deal with in respect of any ballot paper the Returning Officer should bear in mind the principle hitherto applied by election judges in construing the provisions of the Ballot Act, 1872, which are now incorporated in R. P. Act. Thus it has been said that the Ballot Act was to be interpreted liberally, and that it was not every departure from the regulations in that Act that would render the vote invalid ; and that while on the other hand, the enactment contained in the body of the Act were absolute and must be obeyed by the voter exactly, yet that, on the other hand, the rules and forms in the schedule were directory merely and it was sufficient if they are obeyed substantially". [Woodward *vs.* Sarsons, L.R. 10 C.P. 746, acc. Phillips *vs.* Goff. 17 Q.B.D. 812, in reg. Pembroke election petition (1908) 21 R.433]. *He should also bear in mind that statutory provisions in general are directory where the thing to be done by officer, but are mandatory where it is to be done by the voter*" (Thornbury, 2 Times L.R. 485) *nido* (Parker's Election Agent and Returning Officer, 5th Edition, page 196.)

"And when the matter is one over which the voter has no control, the vote is not to be considered bad by reason of an omission or error of an officer" (16 Q.B.D. 746).

A scrutiny of all these extracts clearly indicates that there is a consensus of opinion in the matter that where the thing is to be done by an officer and where the voter has no control over it, the provision must be construed as directory and the voter should not be allowed to suffer for the mistake or error of officer. In this case, for the reasons already stated, the officers alone were responsible for the interchange of ballot papers and the electors had no control over it. They should not, therefore, be allowed to suffer for the mistake on the part of the officers. In this view of the case also, the provisions of rule 47(1)(c) must be held directory and substantial compliance thereof must be considered sufficient and the interchange of ballot papers found in the boxes of various candidates to the House of People must be accepted as proper votes and need not be rejected.

9. There is yet another angle from which this case can be viewed. I have held above that the interchange of ballot papers at the Polling Stations at Sobhapur, Malkajra and Bamangaon was due to official bunglings and the matter was one over which the voters had no control. The electors at these polling stations appear, to have followed the procedure as laid down in rules 22 to 25. Under rule 22 an elector has to apply for a ballot paper for the purpose of voting at a polling station and the polling officer concerned, after scrutiny and performance of certain formalities, delivers a ballot paper from out of a number of ballot papers that entrusted to his charge and that particular ballot allocated to the elector, must, to all intents and purposes, be deemed to be the ballot paper authorised for use at the particular polling station, irrespective of the fact whether or not it conforms to rule 28, that is to say, whether or not it contains the serial number and the distinguishing mark as decided by the Election Commissioner. The elector, in fact, is not concerned with it nor is a duty to scrutinize the ballot paper cast upon him by any rules. Thus in the present case the interchanged ballot papers, that is, the State Assembly ballot papers, that were delivered to the respective voters of the House of People must be held as ballot papers authorised for use as contemplated in rule 47 (1)(c) and their validity cannot be questioned nor can they be rejected.

10. Much has been made of the word "shall" in rules 28 and 47, in the course of arguments, by the learned counsel for the petitioner. I, however, do not attach importance to it in view of the peculiar circumstances of this case, already discussed. As pointed out in the Interpretation of Indian Statutes by Jagdish Swarup, at page 274, the use of the word "shall" would not of itself make a provision of the Act mandatory. It is to be construed with reference to the context in which it is used. In cases of affirmative words even the word "shall" might be taken to be only directory as distinguished from imperative.

11. As regards the action of the Election Commission in regularising the issue of wrong ballot papers at Sobhapur Polling Station, it may be noted that under Article 324(1) of the Constitution of India certain powers, namely, superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections, to Parliament and to the Legislature of every State are vested in the Election Commission. Obviously under these powers the Commission could act. Conduct of election could be controlled by regularising something which was irregular, by rectifying mistakes committed by officers who were concerned with the discharge of various duties under the Representation of the People Act and Rules framed thereunder, and issue directions for their guidance. It was in pursuance of these powers that the irregularity, namely, issue of State Assembly ballot papers to the voters of the House of People, committed by Presiding Officer of Sobhapur Polling Station, must be deemed to have been regularised. The voters had voted for the persons for whom they wished or intended to vote, without bothering themselves whether the ballot papers delivered to them was or was not for that particular constituency. In fact it was no concern of theirs. The irregularity had not effected the election in any way. It was only a formal mistake, committed by the Polling Officer which could be rectified or regularised but for the directions in rule 28. But under rule 28 also it was for the Election Commission only to decide about the distinguishing mark. The Election Commissioner could modify its previous order under which it had decided green coloured bar for the ballot paper meant for the House of People. This the Commission could do even retrospectively inasmuch as the conduct of election was not over at the time. The direction relates to the counting of votes which was not over at that stage. The Commission said that a mistake was committed by an officer in issuing the ballot papers which did not pertain to that constituency and that the electors had rightly exercised their right of vote on the basis of that paper. The Commission was, thus, in my opinion, justified in regularising that mistake.

12. This point, however, to my mind, is no longer important in view of my finding that the provisions of Rule 47(1)(c) are directory and meticulous compliance of these provisions is not called for. The matter being directory it cannot be said that there was any substantial non-compliance with the provision of law if particular contents were missing from particular ballot papers, so long as this did not affect the right of selection and choice of the electors.

13. It will not be out of place to add here that my view regarding rule 47(1)(c) being directory, finds support in the decisions of four other Tribunals, *viz.* Election Petitions Nos. (i) 5/52, (ii) 26/52, (iii) 39/52 and (iv) 122/52, published in the various issues of the *Gazette of India Extraordinary*. No contrary view has, so far, been taken by any of the Tribunals, and this is significant.

14. Mere non-compliance with the rules made under the Act is not enough under section 100(2)(c) of the Representation of the People Act, 1951. It must also be proved that by reason of such non-compliance "the result of the election has been materially affected". This must be clearly established by satisfactory evidence. But there is no evidence on record to prove that as a result of non-compliance with the rules the result of the election was affected materially.

15. Thus, for the reasons stated in the foregoing paragraphs, my findings are that :—

(i) the ballot papers found in the boxes of both, the petitioner and the respondent No. 1, at Sobhapur Polling Stations Nos. 316 and 317, bearing different distinguishing marks from the authorised marks, were not invalid under rule 47(1)(c) and were rightly accepted and counted.

(ii) The Election Commission was authorised to modify its decision in respect of the distinguishing marks and its direction to the Returning Officer to accept and count all these votes, irrespective of the distinguishing marks, was correct, and

(iii) the returning Officer's order rejecting the ballot papers, bearing different marks than the prescribed distinguishing marks found in the boxes of petitioner and the respondents at Malkajra Polling Station No. 299 and Bamangaon Polling Station No. 317, was improper. These votes should have been accepted and counted.

16. As a result of these findings the respondent No. 1 gets an additional majority of votes over the petitioner, and the petition is thus liable to be dismissed with costs.

The 27th March 1953

(Sd.) S. M. AHMED, *Member*,  
Election Tribunal, Hoshangabad.

#### ORDER OF THE TRIBUNAL

It is hereby ordered that the election petition be dismissed. As for costs it is ordered that in view of the peculiar nature of the case and the fact that the petition is the result of the mis-handling of ballot papers by the officials, parties should bear them as incurred.

(Sd.) B. K. PURANIK, *Chairman*,  
Election Tribunal, Hoshangabad.

(Sd.) B. CHATTERJI, *Member*,  
Election Tribunal, Hoshangabad.

The 27th March 1953.

(Sd.) S. M. AHMED, *Member*,  
Election Tribunal, Hoshangabad.

#### SCHEDULE OF COSTS OF THE PETITION

	Petitioner	Respt. No. 1
1. Process-fee	1 8 0	7 8 0
2. Subsistence allowance of witnesses	17 4 0	174 12 0
3. Pleader's fees (No certificate filed)	0 0 0	0 0 0
<b>TOTAL</b>	<b>18 12 0</b>	<b>182 4 0</b>

The 27th March 1953.

(Sd.) B. K. PURANIK, *Chairman*,  
Election Tribunal, Hoshangabad.

[No. 19/180/52-Elec.III/4325.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

